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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,531

12/19/2005

Brian Graham

13801US

9102

24116 7590 08/05/2009  
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EXAMINER

KELLY, ROBERT M

ART UNIT

PAPER NUMBER

1633

MAIL DATE

DELIVERY MODE

08/05/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Notice of Abandonment</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/531,531	GRAHAM ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ROBERT M. KELLY	1633	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 03 April 2009.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☒ A reply was received on 03 April 2009 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See continuation sheet below.

/Robert M Kelly/  
Primary Examiner, Art Unit 1633

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

As noted in the notice of non-compliant amendment of 3/3/09, the third non-compliant amendment has herein been considered non-bone-fide. It is noted, as stated in the notice of non-compliant amendment of 3/3/09, the previously entered amendment is that 12/7/07. At least Claim 11 has remained serially-improperly-marked. Claim 11, as last entered, in the amendment of 12/7/07, recited "The process of claim 10, wherein the formulation comprises a surfactant." The non-entered amendment of 8/28/08 recited "The method of claim 66, wherein said liquid carrier vehicle contains a surfactant dissolved or suspended therein.", wherein the limitations of "said liquid carrier vehicle contains" and "dissolved or suspended therein." are not underlined. The non-entered amendment of 12/3/08 repeats the same incorrect markings. The non-entered amendment of 4/3/09, while being amended the same, does provide underlining for "dissolved or suspended therein." but fails to provide underlining for "said liquid carrier vehicle contains". In each notice of non-compliant amendment for the non-entered amendments of 8/28/08 and 12/3/08 (the notices of 10/23/08 and 3/3/09), the Examiner specifically warned Applicant that the claims were not thoroughly checked due to the sheer number of claims and the fact that to enter the claims would force the Examiner to make of record the proper markings in each instance, and that it is not the Examiner's duty to do so, but Applicant's duty. In addition, the last notice of non-compliant amendment warned Applicant that a third non-compliant amendment would force abandonment as being non-responsive. Herein, at the very least, Claim 11 has been serially improperly marked for the same reasons. Hence, this application is properly abandoned for non-bone-fide response.